

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/25/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-001413

FILED: _____

ROBERT KERR

ROBERT KERR
3441 N 31ST ST #136
PHOENIX AZ 85016-0000

v.

DUPONT CORIAN, et al.

W TODD COLEMAN

SCOTTSDALE JUSTICE COURT
PINNACLE DISTRIBUTION
CONCEPTS, INC.
DOUGLAS P. KLEIN
15300 N 90TH ST, STE 200
SCOTTSDALE AZ 85260
HOME DEPOT
KAREN POLYAKOV
3800 W CHAPMAN AVENUE
ORANGE CA 92868

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since receipt of Appellant's reply memorandum on May 3, 2002. This Court has considered and reviewed the record of the proceedings from the Scottsdale Justice Court consisting of the Scottsdale Justice

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Court's file. This Court has also considered the memoranda submitted by the parties and counsel.

Plaintiff originally filed his complaint in the East Phoenix Justice Court and after the Justice of the Peace recused himself, the case was transferred to the Scottsdale Justice Court. Appellant had claimed in his complaint that his Dupont Corian sink had become pitted and stained. Appellant sought reimbursement from Defendant/Appellee's herein. The Scottsdale Justice Court set this case for a pretrial conference and mediation. All parties appeared except Plaintiff. On September 10, 2001, Judge Goodman of the Scottsdale Justice Court dismissed the case without prejudice. Thereafter, Appellee filed an Application for Attorney's Fees and Costs. Appellant filed a Motion to Reopen the Case. Appellant's Motion to Reopen the Case was denied October 10, 2001. Appellee's Application for Attorney's Fees and Costs was granted November 21, 2001; however, the lodged order was not signed by the Scottsdale Justice Court until November 30, 2001. Appellant's Notice of Appeal was prematurely filed November 25, 2001. Appellant's Notice of Appeal was the subject of a motion from Appellee wherein Appellee moved to strike the Notice of Appeal. This motion was granted by the trial court December 21, 2001. No other notices of appeal have been filed in this case.

Rule 9(a), Arizona Superior Court Rules of Appellate Procedure-Civil, requires that a Notice of Appeal be filed:

With the trial court and served by Appellant upon all other parties not later than ten (10) days after Notice of Entry of Judgment is made by the trial court to the parties or their attorneys....

In this case, Appellant's Notice of Appeal of November 27, 2001 was not timely filed to challenge the denial of his Motion to Reopen the Case (that was denied October 10, 2001). That order was made more than ten (10) days before Appellant filed

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the Notice of Appeal. The Notice of Appeal (dated November 25, 2001) filed November 27, 2001 was premature as to the attorney's fees issue, since the order awarding attorney's fees was not signed until November 30, 2001. Unfortunately, no timely Notice of Appeal has been filed by Appellant in this case.

IT IS THEREFORE ORDERED dismissing this appeal.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale Justice Court for all further and future proceedings in this case.